



Order 96-10-16

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

## **BACKGROUND**

U.S. Route 2 of the U.S.-Philippines Air Transport Agreement provides for scheduled service by designated U.S. carriers between any point in the United States and any point in the Philippines. Under amendments to the Agreement reached in a 1995 Protocol, U.S. carriers have the right to convert their Route 2 combination service frequencies into all-cargo frequencies (but not back again to combination). The United States can designate only three U.S. carriers on Route 2, and we have designated Continental Micronesia (CMI), Northwest Airlines and United. U.S. Route 2 carriers are limited to a total of 31 weekly frequencies. Those frequencies are allocated among the three designated carriers as follows: CMI-7, Northwest-14 and United-10. CMI and Northwest are using all of their allocated frequencies, while United is using seven of its ten allocated frequencies.

By Order 96-9-26, we renewed United's allocation of seven of its ten weekly U.S. Route 2 frequencies. We also tentatively renewed United's allocation of its three remaining frequencies which it planned to use to provide all-cargo service between the United States and the Philippines beginning March 1, 1997, and tentatively denied Northwest's request for the permanent reallocation of three of United's frequencies.<sup>2</sup> However, recognizing that United would not be using the frequencies until March 1997, we tentatively reallocated the flights to Northwest to use on a temporary basis, through February 28, 1997, after which United proposes to use them for its own all-cargo scheduled service. We also proposed a monthly reporting requirement on United to monitor the carrier's progress in instituting its proposed service.

## **Objections**

Northwest filed objections to our show-cause order. Northwest argues that the Department should reconsider its tentative decision and reverse it by awarding the three frequencies to Northwest on a permanent basis.

In support of its request, Northwest states that the Department's tentative decision to allow United to retain valuable rights that it has not used for more than two years is contrary to the public interest and inconsistent with U.S. aviation policy as demonstrated by its earlier pleadings. It further states that while it objects to the temporary award, it will commence service under the award with three weekly U.S.-Philippines all-cargo flights effective November 1, 1996. However, in this regard, Northwest maintains that it considers these operations as permanent and plans to

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<sup>2</sup> CMI, Northwest and United hold certificate authority to serve the Philippines. See Orders: 95-1-41, 90-6-44 and 92-3-38, respectively. The frequency allocation of CMI was recently renewed and increased from four to seven flights since additional frequencies became available for regional service. See Order 96-9-11. The frequency allocation of Northwest was recently renewed for fourteen frequencies. See Order 96-9-11. The allocation of United's three flights at issue here expired on September 30, 1996, but continues in effect under the provisions of the Administrative Procedure Act, 5 U.S. C. 558(c), pending Department action on United's renewal application.

operate them on that basis with uninterrupted service for its customers. In the event the Department does not reverse its tentative decision, Northwest urges the Department to take necessary action to ensure that it does not have to cease all-cargo service in the U.S.-Philippines market if and when United enters the market as proposed. Finally, Northwest states that the monthly reports to be submitted by United should be due the first of the month instead of the 20th in order to provide the Department with more time to ensure that Northwest may continue its service.

United filed a reply to Northwest's objections stating that Northwest offers no new arguments or evidence in support of its position that three of United's frequencies should be permanently reallocated to Northwest, and that the Department therefore should make final its tentative decision in Order 96-6-26. In addition, United states that it takes no position with respect to Northwest's proposal regarding United's monthly progress reports and will file the reports on whatever date the Department deems appropriate.

## **Decision**

We have decided to make final the renewal of United's allocation of three weekly U.S.-Philippine frequencies at issue here for a period of two years and our tentative decision not to grant Northwest's request for permanent reallocation of those frequencies. We will also make final our tentative decision to reallocate United's three weekly frequencies on a temporary basis to Northwest through February 28, 1997, and to require United to report on a monthly basis on its progress toward implementing service using these frequencies.

In our show-cause order, we tentatively concluded that United had presented a reasonable plan to use its three dormant frequencies and that, based on our policy in such circumstances, it should be permitted to retain its frequencies, subject to a monthly reporting requirement, so that we could monitor its progress toward implementation of its proposed new all-cargo service. In these circumstances, we tentatively found that the frequencies should not be reallocated to Northwest on a permanent basis. However, we also recognized that, based on United's plans, the frequencies would not be used until March 1997. Given Northwest's plans to use the flights immediately, we tentatively concluded that temporary reallocation of the flights to Northwest was in the public interest.

Northwest has presented no new arguments or evidence that persuade us to modify our tentative decision in this case. Rather, Northwest disagrees with our decision not to reallocate the flights on a permanent basis, and directs us back to arguments raised in its earlier pleadings in this case. As those arguments were fully addressed in reaching our tentative decision, we will not readdress those issues here.

Therefore, we will renew United's allocation of three U.S. Route 2 frequencies for a period of two years (coextensive with renewal of its other seven weekly frequencies),

subject to a monthly reporting requirement detailing United's progress toward inaugurating its proposed all-cargo service in March 1997. Such reports must include the status of: (a) its delivery of converted aircraft for these services, and, if its aircraft plans change, the status of delivery of new aircraft, including any contracts relating to the acquisition/lease of aircraft for these services; (b) its ground handling arrangements and access to cargo facilities in the Philippines and Japan; and (c) its promotional plans including samples of promotional material, and OAG advertisements. In this regard, we had originally proposed that the reports be filed no later than the 20th of each calendar month. Northwest has proposed that the date be changed to the first of each calendar month. United has not opposed that request. Upon consideration of Northwest's comments, we are persuaded that changing the date to the first of each calendar month is appropriate and will facilitate a smoother transition of service under the frequencies should that be necessary. These reports would begin in November 1996. They should be addressed to the Director, Office of International Aviation, filed in Docket OST-96-1618, and served on all parties to the docket.

We will also make final our proposal to reallocate United's three dormant frequencies on a temporary basis, through February 28, 1997, to Northwest. Northwest has confirmed that it will use the award and intends to inaugurate its service in November in time for the peak winter season, thereby ensuring maximum use of these limited rights. As we stated in our show-cause order, before March, we intend to review United's progress in instituting its own all-cargo service through the monthly reports that we are requiring in this order. If United does not demonstrate that it is prepared to commence service, then we will consider whether extension of Northwest's operation of the flights is warranted, or whether we should institute procedures toward permanent reallocation of the frequencies.

We note that Northwest has stated that it deems its allocation in this case to be permanent even if United begins service in March 1997. We made it very clear in our tentative decision and emphasize again that our award here represents only a temporary reallocation of United's frequencies, and Northwest should not misconstrue their status. While we are sympathetic to Northwest's desire for uninterrupted Philippine service, any decision with respect to its ability to maintain continuous service is best considered in the context of our review of the situation in March 1997 and the circumstances present at that time. Our aviation agreement with the Philippines currently provides for operation of no more than 31 weekly frequencies on U.S. Route 2 and all of those frequencies have been allocated. Additional frequencies are not available until October 1997.

Finally, consistent with our standard practice, we intend to subject United's frequency renewal and Northwest's temporary frequency reallocation to dormancy conditions whereby the frequencies will automatically be relinquished to the Department for reallocation if they are not used for a period of 90 days after the proposed startup

date.<sup>3</sup> The dormancy period would begin March 1, 1997, with respect to United's three currently dormant frequencies. With respect to Northwest, the dormancy period would begin November 1, 1996, Northwest's proposed startup date for its service.

**ACCORDINGLY,**

1. We renew the allocation of three weekly U.S.-Philippine U.S. Route 2 frequencies to United Air Lines, Inc.;
2. The frequency renewal granted in ordering paragraph 1, above, is effective immediately and shall expire (a) September 30, 1998, or (b) the 90th day after United fails to use the frequencies beginning March 1, 1997, unless the Department earlier suspends, modifies, or withdraws the frequency allocation;
3. We reallocate to Northwest Airlines, Inc., on a temporary basis, three weekly U.S.-Philippine U.S. Route 2 frequencies currently held by United Air Lines, Inc.;
4. The frequency reallocation granted in ordering paragraph 3, above, is effective immediately and shall expire (a) February 28, 1997, or (b) the 90th day after Northwest fails to use the frequencies beginning November 1, 1996, unless the Department earlier suspends, modifies, or withdraws the frequency allocation;
5. We require United Air Lines, Inc., to file a written report on the first of each month addressed to the Director, Office of International Aviation, as described in the text of this order, regarding its progress toward implementing its U.S.-Philippine all-cargo service;
6. We deny the application of Northwest Airlines, Inc., in Docket OST-96-1655, to the extent it requests permanent reallocation of the three U.S. Route 2 U.S.-Philippine frequencies currently held by United Air Lines, Inc.; and
7. We will serve this order on United Air Lines, Inc.; Northwest Airlines, Inc.; Continental Micronesia, Inc.; the Department of State (Office of Aviation Negotiations); the Ambassador of the Philippines in Washington, D.C.; and the Federal Aviation Administration (AFS-220).

By:

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<sup>3</sup> See, *e.g.*, Orders 96-2-17, 96-6-12, 96-6-53, and the August 29, 1996, Notices of Action Taken renewing the U.S.-Philippine frequency allocations held by Northwest and Continental Micronesia (Dockets OST-96-1615 and 96-1499, respectively).

**CHARLES A. HUNNICUTT**  
**Assistant Secretary for Aviation**  
**and International Affairs**

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